

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:)

JAMES SETH WEINTRAUB, M.D.)

File No. 800-2014-002621

**Physician's and Surgeon's
Certificate No. G 40636)**

Respondent)

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on January 12, 2018.

IT IS SO ORDERED December 15, 2017.

MEDICAL BOARD OF CALIFORNIA

By: 

**Kristina D. Lawson, J.D., Chair
Panel B**

1 XAVIER BECERRA
Attorney General of California
2 E. A. JONES III
Supervising Deputy Attorney General
3 BENETH A. BROWNE
Deputy Attorney General
4 State Bar No. 202679
California Department of Justice
5 300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
6 Telephone: (213) 897-7816
Facsimile: (213) 897-9395
7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **MEDICAL BOARD OF CALIFORNIA**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 800-2014-002621

12 **JAMES SETH WEINTRAUB, M.D.**
13 **1633 Erringer Road, #201**
Simi Valley, CA 93065

OAH No. 2017061130

14 **Physician's and Surgeon's Certificate No. G**
15 **40636,**

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

16 Respondent.

17
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
19 entitled proceedings that the following matters are true:

20 **PARTIES**

21 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board
22 of California (Board). She brought this action solely in her official capacity and is represented in
23 this matter by Xavier Becerra, Attorney General of the State of California, by Beneth A. Browne,
24 Deputy Attorney General.

25 2. Respondent James Seth Weintraub, M.D. (Respondent) is represented in this
26 proceeding by attorney Peter R. Osinoff, Esq., whose address is: 355 South Grand Avenue, Suite
27 1750, Los Angeles, California 90071.

28 3. On or about August 20, 1979, the Board issued Physician's and Surgeon's Certificate

No. G 40636 to Respondent. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2014-002621, and will expire on August 31, 2019, unless renewed.

JURISDICTION

4. Accusation No. 800-2014-002621 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on December 30, 2016. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2014-002621 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2014-002621. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

9. Respondent understands and agrees that the charges and allegations in Accusation No. 800-2014-002621, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate.

10. For the purpose of resolving the Accusation without the expense and uncertainty of

1 further proceedings, Respondent agrees that, at a hearing, Complainant could establish a *prima*
2 *facie* case for the charges in the Accusation, and that Respondent hereby gives up his right to
3 contest those charges.

4 11. Respondent agrees that his Physician's and Surgeon's Certificate is subject to
5 discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the
6 Disciplinary Order below.

7 CIRCUMSTANCES IN MITIGATION

8 12. Respondent has never been the subject of any disciplinary action in his 38 years as a
9 licensee. He is admitting responsibility at an early stage in the proceedings.

10 CONTINGENCY

11 13. This stipulation shall be subject to approval by the Medical Board of California.
12 Respondent understands and agrees that counsel for Complainant and the staff of the Medical
13 Board of California may communicate directly with the Board regarding this stipulation and
14 settlement, without notice to or participation by Respondent or his counsel. By signing the
15 stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek
16 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails
17 to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary
18 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal
19 action between the parties, and the Board shall not be disqualified from further action by having
20 considered this matter.

21 14. The parties understand and agree that Portable Document Format (PDF) and facsimile
22 copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile
23 signatures thereto, shall have the same force and effect as the originals.

24 15. In consideration of the foregoing admissions and stipulations, the parties agree that
25 the Board may, without further notice or formal proceeding, issue and enter the following
26 Disciplinary Order:

27 DISCIPLINARY ORDER

28 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 40636 issued

to Respondent shall be and is hereby Publicly Reprimanded pursuant to California Business and Professions Code section 2227, subdivision (a)(4). This Public Reprimand, which is issued in connection with Accusation No. 800-2014-002621, is as follows:

“Your documentation of patient information, observations, informed consent and procedures performed in two office progress notes in 2012 and 2013 for patient W.M. was inadequate, in violation of California Business and Professions Code sections 2234 and 2266.”

IT IS FURTHER ORDERED that Respondent shall comply with the following conditions:

1. EDUCATION COURSE. Within 60 calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for its prior approval educational program(s) or course(s) which shall not be less than 20 hours. The educational program(s) or course(s) shall be aimed at correcting any areas of deficient practice or knowledge and shall be Category I certified. The educational program(s) or course(s) shall be at Respondent’s expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Following the completion of each course, the Board or its designee may administer an examination to test Respondent’s knowledge of the course. Within one year of the effective date of this order, Respondent shall provide proof of attendance for 20 hours of CME in satisfaction of this condition.

2. MEDICAL RECORD KEEPING COURSE. Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in medical record keeping approved in advance by the Board or its designee. Respondent shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent’s initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The medical record keeping course shall be at Respondent’s expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A medical record keeping course taken after the acts that gave rise to the charges in the

1 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
2 or its designee, be accepted towards the fulfillment of this condition if the course would have
3 been approved by the Board or its designee had the course been taken after the effective date of
4 this Decision.


5 Respondent shall submit a certification of successful completion to the Board or its
6 designee not later than 15 calendar days after successfully completing the course, or not later than
7 15 calendar days after the effective date of the Decision, whichever is later.

8 3. Any material failure to comply with conditions 1 and 2 set forth above shall constitute
9 unprofessional conduct.

10 ACCEPTANCE


11 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
12 discussed it with my attorney, Peter R. Osinoff, Esq. I understand the stipulation and the effect it
13 will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and
14 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
15 Decision and Order of the Medical Board of California.

16
17 DATED: 10/10/17


JAMES SETH WEINTRAUB, M.D.
Respondent

18
19
20 I have read and fully discussed with Respondent JAMES SETH WEINTRAUB, M.D. the
21 terms and conditions and other matters contained in the above Stipulated Settlement and
22 Disciplinary Order. I approve its form and content.

23
24 DATED: 10-11-17


PETER R. OSINOFF, ESQ.
Attorney for Respondent

25
26 ///

Edward Dell, Esq.

27 ///

28 ///

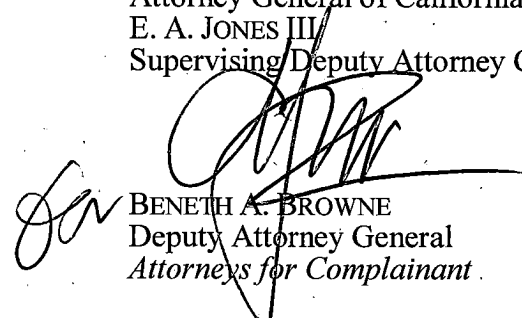
ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Medical Board of California.

Dated: October __, 2017

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
E. A. JONES III
Supervising Deputy Attorney General


BENETH A. BROWNE
Deputy Attorney General
Attorneys for Complainant

LA2016503657
62550495

Exhibit A

Accusation No. 800-2014-002621

1 KAMALA D. HARRIS
2 Attorney General of California
3 E. A. JONES III
4 Supervising Deputy Attorney General
5 BENETH A. BROWNE
6 Deputy Attorney General
7 State Bar No. 202679
California Department of Justice
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-7816
Facsimile: (213) 897-9395
Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO *Dec 30 20 16*
BY *[Signature]* ANALYST

8 BEFORE THE
9 MEDICAL BOARD OF CALIFORNIA
10 DEPARTMENT OF CONSUMER AFFAIRS
11 STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

Case No. 800-2014-002621

13 **James Seth Weintraub, M.D.**
14 **1633 Erringer Road, #201**
15 **Simi Valley, CA 93065**

A C C U S A T I O N

16 **Physician's and Surgeon's Certificate**
17 **No. G 40636,**

Respondent.

18 Complainant alleges:

19 **PARTIES**

20 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official
21 capacity as the Executive Director of the Medical Board of California, Department of Consumer
22 Affairs (Board).

23 2. On or about August 20, 1979, the Medical Board issued Physician's and Surgeon's
24 Certificate Number G 40636 to James Seth Weintraub, M.D. (Respondent). The Physician's and
25 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein
26 and will expire on August 31, 2017, unless renewed.

27 **JURISDICTION**

28 3. This Accusation is brought before the Board, under the authority of the following

1 laws. All section references are to the Business and Professions Code unless otherwise indicated.

2 4. Section 2229 of the Code states, in subdivision (a):

3 "Protection of the public shall be the highest priority for the Division of Medical Quality,^[1]
4 the California Board of Podiatric Medicine, and administrative law judges of the Medical Quality
5 Hearing Panel in exercising their disciplinary authority."

6 5. Section 2227 of the Code provides that a licensee who is found guilty under the
7 Medical Practice Act may have his or her license revoked, suspended for a period not to exceed
8 one year, placed on probation and required to pay the costs of probation monitoring, or such other
9 action taken in relation to discipline as the Board deems proper.

10 6. Section 2234 of the Code, states:

11 "The board shall take action against any licensee who is charged with unprofessional
12 conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not
13 limited to, the following:

14 "(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the
15 violation of, or conspiring to violate any provision of this chapter.

16 "(b) Gross negligence.

17 "(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or
18 omissions. An initial negligent act or omission followed by a separate and distinct departure from
19 the applicable standard of care shall constitute repeated negligent acts.

20 "(1) An initial negligent diagnosis followed by an act or omission medically appropriate
21 for that negligent diagnosis of the patient shall constitute a single negligent act.

22 "(2) When the standard of care requires a change in the diagnosis, act, or omission that
23 constitutes the negligent act described in paragraph (1), including, but not limited to, a
24 reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the
25 applicable standard of care, each departure constitutes a separate and distinct breach of the

26
27 ¹ Pursuant to Business and Professions Code section 2002, the "Division of Medical
28 Quality" or "Division" shall be deemed to refer to the Medical Board of California.

1 standard of care.

2 "..."

3 7. Section 2266 of the Code states: "The failure of a physician and surgeon to maintain
4 adequate and accurate records relating to the provision of services to their patients constitutes
5 unprofessional conduct."

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(Gross Negligence)**

8 8. Respondent is subject to disciplinary action under section 2234, subdivision (b), in
9 that he committed gross negligence in the care and treatment of a patient. The circumstances are
10 as follows:

11 9. On or about September 20, 2012, patient W.M., a 52-year-old female, presented for
12 her first office visit with Respondent, a dermatologist. Respondent documented the patient's
13 subjective complaints with two words, "mole" and "acne." Respondent failed to document how
14 long patient W.M. had the mole, whether it was symptomatic, whether she noticed any changes
15 over time or other relevant factors. Respondent failed to document whether the patient had any
16 personal or family history of skin cancers like melanoma.

17 10. Respondent documented the physical examination of the nevus and that patient W.M.
18 had a negative skin cancer screening. Respondent documented that a "shave" was performed,
19 meaning a shave biopsy. Respondent failed to document with a procedure note or an operative
20 report pertaining to the biopsy. Likewise, he failed to document the consent process or include a
21 consent form in the record. Respondent also failed to document past medical history, past
22 surgical history, relevant family history, medications, allergies or sensitivities.

23 11. Regarding acne, Respondent documented papules on the face on the physical
24 examination. He documented prescribing Monodox and fruit acids. Respondent failed to
25 document the history of patient W.M.'s acne, location of the acne, duration of the acne, previous
26 treatments of acne or response to previous treatments.

27 12. On or about September 21, 2012, Respondent performed an initial pathology reading
28 of the specimen from the shave biopsy and identified melanoma in situ.

1 13. On or about September 28, 2012, a confirmatory consultation was performed by
2 another doctor who confirmed the diagnosis of melanoma in situ and requested special stains to
3 address invasion.

4 14. On or about September 28, 2012, someone from Respondent's office telephoned
5 patient W.M. and advised her that the biopsy was okay. In fact, the pathology report was not
6 finalized yet because special stains were pending and patient W.M. would actually later require
7 excisional removal with appropriate margins.

8 15. On or about March 5, 2013, it appears that Respondent became aware of the
9 miscommunication and patient W.M. was called and advised to return to the office for additional
10 treatment. Apparently she did not respond.

11 16. On or about April 30, 2013, patient W.M. was sent a certified letter which advised her
12 that additional treatment was necessary.

13 17. On or about May 3, 2013, patient W.M. presented for an appointment with
14 Respondent. Respondent documented patient W.M.'s chief complaint as "spot." Respondent
15 documented a review of systems, describing a 3 mm pink macule on the right thigh and red
16 macules on the chest. He documented diagnoses as melanoma in situ and actinic keratosis. He
17 also documented prescribing a topical medication. Respondent performed an incision for the
18 melanoma in situ but failed to document the procedure in an operative report and include: an
19 explanation of what had taken place; the location of the lesion that was excised; the indication for
20 the excision; the skin preparation with antiseptics; the type and amount of anesthetics used; the
21 size of the lesion excised; the margins surrounding the lesion; the size of the defect following
22 excision; the repair type; the types of deep and superficial sutures used; the length of the wound
23 repair at the end of the procedure; the immediate postoperative care; the condition of the patient
24 upon discharge; and, the fact that the specimen was sent for pathology.

25 18. Likewise, Respondent failed to document the informed consent process. Respondent
26 failed to document any conversation with the patient pertaining to consent. Likewise, no written
27 consent form was found in the record containing the name and signature of the patient; the name
28 of the clinic; the name of the procedure performed; name of the practitioner performing the

1 procedure; the risks of the procedure; the benefits of the procedure; alternative treatments and
2 their associated risks; the date and time consent was obtained; a statement that the procedure(s)
3 was explained to the patient; and, the name and signature of the person who explained the
4 procedure to the patient or guardian.

5 19. Respondent was grossly negligent in his care and treatment of patient W.M. when he
6 consistently failed to provide appropriate documentation of her visits and procedures performed
7 upon her, as follows.

8 **Visit and Procedure on September 20, 2012**

9 (a) Respondent failed to document necessary information in the medical record of patient
10 W.M. regarding her visit and the procedure performed on her on September 20, 2012, including:

11 (1) how long patient W.M. had the mole; whether the mole was symptomatic;
12 whether patient W.M. noticed any changes over time or other relevant factors;
13 whether patient W.M. had any personal or family history of skin cancers like
14 melanoma;

15 (2) specifics of the biopsy on a procedure note or operative report; the consent
16 process either in writing or on a consent form;

17 (3) past medical history; past surgical history; relevant family history;
18 medications; allergies or sensitivities; and,

19 (4) the history of patient W.M.'s acne; its location; its duration; previous
20 treatments for acne or patient W.M.'s response to previous treatments.

21 **Visit and Procedure on May 3, 2013**

22 (b) Respondent failed to document necessary information in the medical record of patient
23 W.M. regarding her visit and the procedure performed on her on May 3, 2013, including:

24 (1) documentation of the informed consent process, including a description of
25 any conversation with patient W.M. pertaining to consent or any written consent form
26 containing: the name and signature of the patient; the name of the clinic; the name of
27 the procedure performed; the name of the practitioner performing the procedure; the
28 risks of the procedure; the benefits of the procedure; alternative treatments and their

1 associated risks; the date and time consent was obtained; a statement that the
2 procedure(s) was explained to the patient; and, the name and signature of the person
3 who explained the procedure to the patient or guardian; and,

4 (2) documentation necessary in an operative report including: an explanation of
5 what had taken place; the location of the lesion that was excised; the indication for the
6 excision; the skin preparation with antiseptics; the type and amount of anesthetics
7 used; the size of the lesion excised; the margins surrounding the lesion; the size of the
8 defect following excision; the repair type; the types of deep and superficial sutures
9 used; the length of the wound repair at the end of the procedure; the immediate
10 postoperative care; the condition of the patient upon discharge; and, the fact that the
11 specimen was sent for pathology.

12 SECOND CAUSE FOR DISCIPLINE

13 (Repeated Negligent Acts)

14 20. Respondent is subject to disciplinary action under section 2234, subdivision (c), in
15 that he committed repeated negligence in the care and treatment of a patient. The circumstances
16 are as follows:

17 21. The facts and circumstances alleged in the paragraphs 9 through 18 are incorporated
18 here as if fully set forth.

19 22. Respondent was negligent in his care and treatment of patient W.M. when he failed to
20 act in a timely manner on a biopsy report which identified a melanoma.

21 23. Respondent was repeatedly negligent in his care and treatment of patient W.M. when
22 he failed to provide appropriate documentation of her visits and procedures performed upon her,
23 as follows.

24 Visit and Procedure on September 20, 2012

25 (a) Respondent failed to document necessary information in the medical record of patient
26 W.M. regarding her visit and the procedure performed on her on September 20, 2012, including:

27 (1) how long patient W.M. had the mole; whether the mole was symptomatic;
28 whether patient W.M. noticed any changes over time or other relevant factors;

1 whether patient W.M. had any personal or family history of skin cancers like
2 melanoma;

3 (2) specifics of the biopsy on a procedure note or operative report; the consent
4 process either in writing or on a consent form;

5 (3) past medical history; past surgical history; relevant family history;
6 medications; allergies or sensitivities; and,

7 (4) the history of patient W.M.'s acne; its location; its duration; previous
8 treatments for acne or patient W.M.'s response to previous treatments.

9 **Visit and Procedure on May 3, 2013**

10 (b) Respondent failed to document necessary information in the medical record of patient
11 W.M. regarding her visit and the procedure performed on her on May 3, 2013, including:

12 (1) documentation of the informed consent process, including a description of
13 any conversation with patient W.M. pertaining to consent or any written consent form
14 containing: the name and signature of the patient; the name of the clinic; the name of
15 the procedure performed; the name of the practitioner performing the procedure; the
16 risks of the procedure; the benefits of the procedure; alternative treatments and their
17 associated risks; the date and time consent was obtained; a statement that the
18 procedure(s) was explained to the patient; and, the name and signature of the person
19 who explained the procedure to the patient or guardian; and,

20 (2) documentation necessary in an operative report including: an explanation of
21 what had taken place; the location of the lesion that was excised; the indication for the
22 excision; the skin preparation with antiseptics; the type and amount of anesthetics
23 used; the size of the lesion excised; the margins surrounding the lesion; the size of the
24 defect following excision; the repair type; the types of deep and superficial sutures
25 used; the length of the wound repair at the end of the procedure; the immediate
26 postoperative care; the condition of the patient upon discharge; and, the fact that the
27 specimen was sent for pathology.

28 ///

1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Failure to Maintain Adequate Medical Records)**

3 24. Respondent is subject to disciplinary action under section 2266 of the Code in that he
4 failed to maintain adequate and accurate records of the services he provided to a patient.

5 25. The facts and circumstances alleged in the First and Second Causes for Discipline are
6 incorporated here as if fully set forth.

7 **PRAYER**

8 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
9 and that following the hearing, the Medical Board of California issue a decision:


10 1. Revoking or suspending Physician's and Surgeon's Certificate Number G 40636,
11 issued to James Seth Weintraub, M.D.;

12 2. Revoking, suspending or denying approval of James Seth Weintraub, M.D.'s authority
13 to supervise physician assistants, pursuant to section 3527 of the Code;

14 3. Ordering James Seth Weintraub, M.D., if placed on probation, to pay the Board the
15 costs of probation monitoring; and

16 4. Taking such other and further action as deemed necessary and proper.

17
18 DATED: December 30, 2016


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

22 LA2016503657
23 62198987
24
25
26
27
28